

ORDER NO. 2108

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
Priority Mail Express & Priority Mail  
Contract 13 (MC2013-34)  
Negotiated Service Agreement

Docket No. CP2013-45

ORDER APPROVING AMENDMENT TO  
PRIORITY MAIL EXPRESS & PRIORITY MAIL CONTRACT 13  
NEGOTIATED SERVICE AGREEMENT

(Issued July 1, 2014)

I. INTRODUCTION

The Postal Service seeks to amend the Priority Mail Express & Priority Mail Contract 13 negotiated service agreement.<sup>1</sup> For the reasons discussed below, the Commission approves the Amendment.

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<sup>1</sup> Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express & Priority Mail Contract 13, June 19, 2014 (Notice). The Amendment is an attachment to the Notice (Amendment).

In Order No. 1647, the Commission approved the Priority Mail Express & Priority Mail Contract 13 negotiated service agreement (Existing Agreement).<sup>2</sup> On June 19, 2014, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On June 23, 2014, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. Notice, Attachment B at 1.

## II. COMMENTS

Comments were filed by the Public Representative.<sup>4</sup> No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. *Id.* at 2. Based on that review, he concludes that the Existing Agreement, as amended, should generate sufficient revenues to cover costs and satisfy 39 U.S.C. § 3633(a) during its first year. *Id.* He notes the absence of data concerning compliance in subsequent years but states that information submitted in connection with the Postal Service's Annual Compliance Report will aid the Commission in ensuring continued compliance with 39 U.S.C. § 3633(a). *Id.* at 2-3.

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<sup>2</sup> See Docket Nos. MC2013-34 and CP2013-45, Order Adding Express Mail & Priority Mail Contract 13 to the Competitive Product List, February 4, 2013 (Order No. 1647).

<sup>3</sup> Order No. 2099, Notice and Order Concerning Amendment to Priority Mail Express & Priority Mail Contract 13 Negotiated Service Agreement, June 23, 2014.

<sup>4</sup> Public Representative Comments on Postal Service Notification of Amendment of Priority Mail Express & Priority Mail Contract 13, June 27, 2014 (PR Comments).

### III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

*Cost considerations.* The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreement has a term of five years.<sup>5</sup> The Amendment extends the term of the agreement to seven years and changes the rates for certain Priority Mail pieces sent under the Existing Agreement. Amendment at 1-2.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section II of the amended agreement should allow the amended agreement's revenues to cover costs for the duration of its term. The Commission will continue to review the cost

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<sup>5</sup> Docket Nos. MC2013-34 and CP2013-45, Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 13 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 23, 2013, Attachment B at 6.

coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

*Other considerations.* The Postal Service states that the Amendment shall become effective on the day after the date that the Commission completes its review. The Existing Agreement, as amended, is set to expire seven years after the initial effective date unless, among other things, it is renewed by mutual agreement.<sup>6</sup>

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days of the termination of the Existing Agreement, as amended, the Postal Service shall file the annual (contract year) costs, volumes, and revenues, disaggregated by weight and zone associated with the amended agreement.

In conclusion, the Commission approves the Existing Agreement, as amended.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the Priority Mail Express & Priority Mail Contract 13 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

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<sup>6</sup> Amendment at 2. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

3. Within 30 days after the Existing Agreement, as amended, terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

By the Commission.

Shoshana M. Grove  
Secretary